

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Otis Mays,

Case No. 21-CV-2382 (WMW/ECW)

Plaintiff,

v.

REPORT AND RECOMMENDATION

The Sherburne County Jail et al.,

Defendants.

In an order dated November 9, 2021, this Court ordered Plaintiff Otis Mays to pay an initial partial filing fee of \$13.12. (*See* Dkt. 4 at 2.) The Court gave Mays 20 days—that is, until November 29, 2021—to make this payment, failing which the Court would recommend dismissing this action without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Mays has not paid the initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Given this recommendation, the Court further recommends that Mays’s pending motions (Dkt. 2, 3) be denied as moot.

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS RECOMMENDED THAT:**

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Plaintiff Otis Mays's pending motions in this action (Dkt. 2, 3) be **DENIED** as moot.

Dated: December 7, 2021

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).